



C.R.P.No.2995 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	02/06/2023
Pronounced on	22/12/2023

C O R A M

THE HONOURABLE Dr.JUSTICE D.NAGARJUN

Civil Revision Petition.No.2995 of 2022

a n d

C.M.P.No.16199 of 2022

M. Murthy ... Petitioner

Vs

1. Mohamed Ali
2. M. Kanagarajan
3. R. Prabhakaran ... Respondents

Prayer: Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order passed by the Principal District Judge, Nagapattinam in I.A.No.2 of 2020 in O.S.No.37 of 2019 dated 31/3/2022.

For Petitioner ... Mr.S.Parthasarathy
Sr. Advocate

For respondents ... Mr.Sricharan Rangarajan
Sr. Advocate
for Mr.Mohamed Ashick



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ORDER

This Civil Revision Petition is filed aggrieved by the dismissal of I.A.No.2 of 2000 dated 31/3/2022, filed under Order 7 Rule 11 of the Code of Civil Procedure in O.S.No.37 of 2019 pending on the file of the learned Principal District Judge at Nagapattinam.

2. For the sake of convenience, during the course of discussion, the parties are being referred to as they arrayed in O.S.No.37 of 2019, thereby whenever the plaintiff and defendants are referred to, in the following order, they are the plaintiffs and defendant, as per O.S.No.37 of 2019.

3. The facts in brief in O.S.No.37 of 2019 are as under:-

Originally one Mr.S.Jayaraman was the owner of stage carriage bus bearing Registration No.TNZ-8609 with permit for plying on the route from Nagore to Vedaranyam viz Nagapattinam, Velanganni Church, Vettaikaraniruppu, Kallimedu, Sembodai and Thopputhurai for a period commencing from 21/7/1986 to 21/7/1989. The said stage carriage



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vehicle was replaced with another vehicle bearing Registration No.TN51-4334 and and route permit was also renewed till 21/7/1994, thereafter, route permit was being renewed from time to time successively, and similarly, the vehicles were also being replaced from time to time.

4. Mr.S.Jayaraman, has sold the vehicle bearing Registration No.TN51-A-8636 along with their route permit in favour of second defendant in the year 2002. The second defendant has replaced the said stage carriage vehicle with another vehicle bearing Registration No.TN51-B-4242 and that he has also renewed the route permit until 20/7/2009.

5. The second defendant has entered into an agreement with first defendant on 29.06.2006 to sell vehicle bearing Registration No.TN51-B-4242 along with route permit for a consideration of Rs.25,00,000/-, of which an amount of Rs.20,00,000/- was paid as an advance on the very same day. As the second defendant failed to transfer the said vehicle and the permit in favour of the first defendant as per the agreement of sale dated 29/6/2006, the first defendant has filed O.S.No.44 of 2006 on the



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file of the Principal District Judge, Nagapattinam against the second defendant seeking specific performance of an agreement of sale, dated 29/6/2006.

6. In the meanwhile, the second defendant has transferred the said vehicle bearing Registration No.TN51-B-4242 along with permit in favour of third defendant. A joint application dated 7/12/2006 was filed by the second and third defendants along with required documents before the Regional Transport Authority, requesting to transfer the route permit from second respondent to third respondent in respect of the bus bearing Registration No.TN51-B-4242. Accordingly, Regional Transport Authority on 25/12/2006 has transferred the permit from the second defendant to the third defendant.

7. A complaint was filed by the first defendant on 27/12/2006 before the Regional Transport Officer requesting him not to transfer the permit from second defendant to the third defendant. Basing on the said representation, Regional Transport Officer has sent a communication dated 29/12/2006 and 11/1/2007 asking the defendants to appear before the Regional Transport Authority for enquiry on 22/1/2007. Aggrieved



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by the same, third defendant has filed W.P.No.1987 of 2007 on the file of this Court and on 3/10/2007, the said writ petition was disposed of with the following observation:-

“Under the circumstances, both the notices issued by Regional Transport Authority dated 29/12/2006 and consequently other notice by Regional Transport Officer dated 11/1/2007 for enquiry to be held on 22/1/2007 are bad and hence they are declared as invalid and liable to be quashed....”

8. Subsequently, the first defendant has preferred an appeal before the State Transport Appellate Tribunal, Chennai in M.V.No461 of 2007 against the orders of the Regional Transport Authority transferring the permit of stage carriage bearing No.TN51-B-4242 from second defendant to third defendant. The said appeal was dismissed by order dated 30/4/2010. In the meanwhile, stage carriage vehicle bearing Registration No.TN51-B-4242 was replaced with another vehicle bearing registration No.TN58J-3279 and that permit was also renewed by the third



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respondent.

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9. In the year 2010, third respondent has transferred the permit in favour of plaintiff along with vehicle bearing No.TN58-J-3279 and the same was confirmed by Regional Transport Authority on 10/6/2010. The stage carriage vehicle bearing Registration No.TN58J-3279 was replaced with stage carriage vehicle bearing Registration No.TN51F-9444 and route permit was also renewed until 217/2019 by the plaintiff.

10. Originally, O.S.No.44 of 2006 was filed by first defendant only against the second defendant. Subsequently, third respondent was impleaded as per orders in I.A.No.82 of 2007. However, second and third defendants have failed to contest the suit, thereby, O.S.No.44 of 2006 was decreed ex parte on 18/4/2012. First defendant has filed E.P for execution of ex parte decree in O.S.No.44 of 2006, on the file of District Court, Nagapattinam and said E.P was allowed and Court has executed sale deed in respect of stage carriage vehicle bearing Registration No.TN51B-4242 along with permit in favour of the first defendant.

11. The plaintiff was not aware of the filing and passing of ex parte



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decree in O.S.No.44 of 2006 and its consequential E.P proceedings including execution of sale deed, by the District Court, as the plaintiff was not party to the O.S.No.44 of 2006. Aggrieved by the decree in O.S.No.44 of 2006, the plaintiff has filed a petition to set aside the ex parte orders in O.S.No.44 of 2006 dated 18/4/2012. The said petition was rejected at the admission stage by the trial Court on 23/5/2012. Aggrieved by the said orders and also aggrieved by the orders in execution proceedings, dated 29/2/2012, plaintiff has filed C.R.P.Nos.746 and 777 of 2019 respectively and this Court has dismissed both the revision petitions.

12. After O.S.No.44 of 2006 was decreed ex parte, on 18/4/2012, the first defendant who is plaintiff in O.S.No.44 of 2006 has filed an application before the Regional Transport Authority to transfer the permit of the stage carriage in TN51-B-4242 in his favour basing on decree in O.S.No.44 of 2006. However, by way of proceedings dated 10/8/2012, the Regional Transport Authority has rejected the request of the first defendant. Aggrieved by the said order, first defendant has filed W.P.No.13042 of 2013 and the same was allowed by way of an order dated 22/6/2016, quashing the proceedings of the Regional Transport



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Authority, dated 10/8/2012 and remitted the same back for fresh consideration. There upon the Regional Transport Authority, by way of proceedings dated 13/10/2016 ordered the transfer of stage carriage permit bearing Registration No.TN51-B-4242 in favour of first defendant.

13. Aggrieved by the orders of the Regional Transport Authority dated 13/10/2016, transferring the permit in the name of first defendant, plaintiff and third defendant have preferred an appeal before the State Transport Appellate Authority, Chennai. The said appeal was dismissed on 2/1/2019 solely on the ground that the Civil Court decree dated 1/2/2012 is in favour of first defendant. Aggrieved by the said orders of the State Transport Authority Appellate Tribunal, plaintiff has filed W.P.No.2123 of 2019 and the same is still pending.

14. Plaintiff has filed O.S.No.37 of 2019, on the file of the District Judge, Nagapattinam, seeking to declare the judgment and decree dated 1/2/2011 in O.S.No.44 of 2006 and the order in E.P.No.72 of 2011 dated 29/2/2012 on the file of the District Judge, Nagapattinam, are null and void mainly on the ground of fraud and misrepresentation and also grant



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of permanent injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the route permit standing in the name of plaintiff.

15. On receipt of summons in O.S.No.37 of 2019, the defendants 1 to 3 have appeared before the Court and third defendant has filed written statement, whereas first defendant has filed I.A.No.2 of 2020 under Order 7 Rule 11 of the Code of Civil Procedure for rejecting the plaint, the plaintiff has filed counter and on hearing both sides, the trial Court has dismissed I.A.No.2 of 2020 by way of a speaking order dated 31/3/2022 declining to reject the plaint in O.S.No.31 of 2019. Aggrieved by the same, present Civil Revision Petition is filed.

16. Order 7 Rule 11 of the Code of Civil Procedure, runs as under:-

“11. Rejection of plaint.- The plaint shall be rejected in the following cases:—

- (a) where it does not disclose a cause of action;
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the court to



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correct the valuation within a time to be fixed by the court, fails to do so;

(c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the court to supply the requisite stamp paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

(e) where it is not filed in duplicate;

(f) where the plaintiff fails comply with the provision of Rule 9.

Provided that the time fixed by the court for the correction of the valuation or supplying of the requisite stamp papers shall not be extended unless the court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp papers, as the case may be within the time fixed by the court and that refusal to extend such time would cause grave injustice to the plaintiff.”

17. Mr.S.Parthasarathy, learned Senior counsel for the first defendant has submitted that as per Section 94 of the Motor Vehicles Act, Civil



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Court has no jurisdiction to entertain the suit in respect of grant of permit and submitted further that plaintiff cannot approbate or reprobate over the jurisdiction of the Civil Court in entertaining the Suit. On the other hand, Mr.Sricharan Rangarajan, Senior Advocate has submitted that Section 94 of the Motor Vehicles Act is not applicable to the facts of the case and that the first defendant who has filed O.S.No.44 of 2006 in respect of transfer of permit, cannot now take a defence that the relief sought for by the plaintiff is hit by Section 94 of the Motor Vehicles Act.

18. Section 94 of the Motor Vehicles Act, runs as under:-

94. Bar on jurisdiction of Civil Courts.—No Civil Court shall have jurisdiction to entertain any question relating to the grant of a permit under this Act, and no injunction in respect of any action taken or to be taken by the duly constituted authorities under this Act with regard to the grant of a permit, shall be entertained by any Civil Court.



19. Therefore, Section 94 of the Motor Vehicles Act, specifically bars the jurisdiction of the Civil Court, in respect of any question relating to grant of permit under Motor Vehicles Act.

20. O.S.No.44 of 2006, is filed seeking specific performance of agreement of sale dated 29/2/2019 in respect of permit for the route Nagore to Vedaranyam with the stage carriage vehicle bearing Registration No.TN51B-4242. Section 94 of the Motor Vehicles Act specifically bars the jurisdiction of Civil Court to file any suit in respect of grant of permits. Therefore, O.S.No.44 of 2006 which is for the specific performance of agreement of sale of permit should not have been registered, entertained and disposed off. Unfortunately, the District Court failed to notice that filing of such suit is barred under Section 94 of the Motor Vehicles Act. On account of specific legal bar under Section 94 of the Motor Vehicles Act, O.S.No.44 of 2019 should not have been entertained by the Court, and even if entertained, the same should not have decreed. Added to it, said decree in O.S.No.44 of 2019 was executed and a sale deed was also executed and basing on such sale deed, consequential orders were passed by the authorities under the Motor Vehicles Act. The orders passed in execution proceedings were



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challenged by way of Civil Revision Petition, but same was dismissed holding that the Court which passed the decree becomes *functus officio* and the same cannot be reopened.

21. In respect of the proposition that the order passed by the Court without jurisdiction would be ***coram non judice***, being a nullity, learned counsel for the plaintiff has cited an authority decided between (2007) 2 SCC – 355 HASHAM ABBAS SAYYAD Vs. USMAN ABBAS SAYYAD AND OTHERS, wherein at paragraph Nos.22 to 24, it has been held thus:-

“22. The core question is as to whether an order passed by a person lacking inherent jurisdiction would be a nullity. It will be so. The principles of estoppel, waiver and acquiescence or even res judicata which are procedural in nature would have no application in a case where an order has been passed by the Tribunal/Court which has no authority in that behalf. Any order passed by a court without jurisdiction would be coram non judice being a nullity, the same ordinarily should not be given effect to. [See [Chief Justice of Andhra Pradesh and Another v. L.V.A. Dikshitulu and Others - AIR 1979 SC 193 & MD Army Welfare Housing Organisation v. Sumangal Services \(P\) Ltd. \(2004\) 8 SCC 619](#)].



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22. In respect of bar of jurisdiction of Civil Courts, questioning the permit under Section 94 of the Motor Vehicles Act, learned counsel for the plaintiff has cited a decision in LABHALA SAMANTHAKAMANI Vs. THE COURT OF DISTRICT MUNSIF, ICHAPURAM AND OTHERS (1994 SCC ONLINE AP 339), wherein at paragraphs 7 to 10, it has been held thus:-

“7. Ms. Vidyavathi, the learned Counsel for respondents 3 and 4 vehemently contends that the suit is maintainable as the permit is not questioned and it is based only on family arrangement dated 15-4-1993 and as such suit is not a bar But, as I have seen the contents of the plaint and also the affidavit filed in support of temporary injunction petition, the whole endeavour of the respondents 3 and 4 was only to see that the benefit of the temporary permit dated 29-12-1993, granted in favour of the writ petitioner is not availed of. May be, directly the permit is not questioned, but in effect, the permit granted by the authority is vacated and ultimately



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it results in annulling the permit which has been granted by the competent authority under the statute. When the statute expressly bars the jurisdiction of the Civil Court in questioning any permit or action taken by the authorities under the [Motor Vehicles Act, 1988](#) the Civil Court had no jurisdiction to entertain the same. As such, I hold that the entire proceedings in O.S.No. 63 of 1993 on the file of the District Munsif, Ichhapuram abate, as they are not maintainable. It is needless to mention that when the suit abates as being not maintainable, all Interlocutory Applications also stand dismissed and any orders passed in the said Interlocutory Applications also disappear.

8. Now, inasmuch as I have held that the respondents 3 and 4 were not entitled to invoke the Civil Court's jurisdiction in view of the specific prohibition contained under [Section 94](#) of the Act. I have to consider as to what is the relief which is available to the respondents 3 and 4 under the



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provisions of the [Motor Vehicles Act](#) in relation to the plea of replacement sought for by the writ petitioner.

9. Inasmuch as the plea for replacement of the vehicle on permanent basis is still pending consideration before the Regional Transport Authority, Srikakulam, the respondents 3 and 4, shall be entitled to file objections, if they choose before the said authority and the said authority shall consider the same and pass appropriate orders in accordance with law. But, so long as the temporary permit which is subsisting as on this date, in favour of the writ petitioner, the writ petitioner shall be entitled to ply her vehicle in accordance with the conditions enumerated in the said permit.

10. I also make it clear that for the relief, other than questioning the permit granted to the writ petitioner and purely arising out of family arrangement in terms of monetary compensation, this order shall not preclude the respondents 3 and 4 from agitating in a common law Court for common law remedy.”



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23. In respect of preposition that agreement to transfer permit is unenforceable as it is forbidden by law, learned counsel for the plaintiff has cited a decision, reported in ***1963 SCC ONLINE AP 123 (TEKUMALLA RAMA RAO Vs. DURGA SURYANARAYANA AND OTHERS)***.

24. The first defendant has taken contradictory and diametrically apposite stands when compared to O.S.No.44 of 2006 with that of the stand taken in O.S.No.37 of 2019. Once main relief in O.S.No.44 of 2006 is nothing but the transport permit and when the provisions of the Motor Vehicles Act mandate that all the disputes in respect of issuance of permit will have to be resolved by the Regional Transport Authority and State Appellate Authorities and that filing of Suit is barred under Section 94 of the Motor Vehicles Act, the first defendant should not have filed O.S.No.44 of 2006. However, the first defendant himself being plaintiff in O.S.No.44 of 2006 has sought for rejection of plaint in O.S.No.37 of 2019 on the ground that Section 94 of the Motor Vehicles Act bars the suit.



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25. On considering the pleadings in O.S.No.37 of 2019, it is clear that the plaintiff is not seeking any relief in respect of transfer of permit in his favour which is hit under Section 94 of the Motor Vehicles Act. Though the subject matter of the suit is in respect of transfer of permit, the plaintiff is seeking the cancellation of decree and judgment in O.S.No.44 of 2006 on the ground that the said decree was obtained by playing fraud and collusion and that filing of such suit was barred under Section 94 of the Motor vehicles Act. Therefore, the first defendant cannot contend that the suit claim is barred under Section 94 of the Motor Vehicles Act.

26. According to the first defendant, plaintiff should not have filed O.S.No.37 of 2019, instead should have approached the statutory authorities under Motor Vehicles Act. It is true that persons aggrieved in respect of the permits of Motor Vehicles, the appropriate authority to be approached is the Regional Transport Officer and the State Transport Appellate Authority. But as a matter of fact, plaintiff has approached the Regional Transport Authority and also the State Appellate Authorities, however, the State Appellate Authority has dismissed the appeal filed by the plaintiff solely on the ground that Civil Court decree in O.S.No.44 of



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2006 is in favour of first defendant. Therefore, the State Appellate Authority has not independently exercised the jurisdiction, under Motor Vehicles Act on account of decree in O.S.No.44 of 2006, passed in favour of first defendant. Had Appellate Authority exercised its jurisdiction without considering the decree in O.S.No.44 of 2006 and disposed of the appeal on merits, as per the provision of Motor Vehicles Act, the plaintiff would not have any grievance. However, on the sole ground that there is a decree in the form of O.S.No.44 of 2006 the State Appellate Authority under the Motor Vehicles Act has dismissed the appeal of the plaintiff.

27. Therefore, there was no option for the first plaintiff except to file the Civil Suit. In case, if the Civil Suit is also barred, the plaintiff would be left with no other alternative, to get his issue resolved, thereby, the first respondent has rightly filed the suit in O.S.No.37 of 2019.

28. It is further submitted by the learned Senior counsel appearing for the first defendant that there are no pleading giving relief of particulars of fraud and misrepresentation and that merely using of phrases like fraud and misappropriation will not itself make the judgment and decree null and void. O.S.No.37 of 2019 is filed to declare that the



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judgment and decree in O.S.No.44 of 2006 dated 1/2/2011 as null and void; to declare that the sale deed executed and registered pursuant to the orders in execution proceeding in E.P.No.72 of 2011 on 29/2/2012 as null and void and to grant permanent injunction restraining the defendants from in any manner interfering in the peaceful possession and enjoyment of the route permit which was granted in favour of the plaintiff.

29. On plain reading of the plaint in O.S.No.37 of 2019, the plaintiff has narrated the nature of fraud that was played by the defendants. According to the plaintiff, the second defendant has executed an agreement to sell the vehicle and the permit in favour of the first defendant and later, first defendant has filed collusive suit against the second defendant wherein, third defendant, was impleaded and both of the defendants have intentionally suffered decree in O.S.No.44 of 2006. It is submitted further that if at all there is no collusion between the defendants 2 and 3 with first defendant, the third defendant who has transferred the vehicle and permit in favour of plaintiff should have intimated about the filing of O.S.No.44 of 2006 to the plaintiff. Therefore, on considering the plaint in O.S.No.37 of 2019, it appears that the third defendant had deliberately not intimated the plaintiff about



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passing of decree in O.S.No.44 of 2006. Therefore, the plaintiff has made endeavor in the plaint to explain how fraud was committed.

30. It is further submitted by the learned Senior counsel appearing for the first defendant that the plaintiff is not entitled to seek the relief of permanent injunction in respect of the route permit from Nagore to Vedaranyam, as it has already been transferred in the name of first defendant by the Regional Transport Authority on 13.01.2017 for the vehicle bearing Registration No. TN 51 AF 3555 and that since RC and and insurance have been standing in the name of the first defendant and that he is running the stage carriage, the plaintiff cannot seek for permanent injunction.

31. It is true that the route permit from Nagore to Vedaranyam has been transferred in the name of first defendant by the concerned authorities. The plaintiff is seeking permanent injunction in respect of route permit restraining the first defendant from using the same. It is the contention of the plaintiff that since the route permit is standing in the name of first defendant the plaintiff cannot seek the permanent injunction. It is to be noted that the plaintiff is seeking the relief of



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declaring the decree and judgement of O.S.No.44 of 2006 as null and void and consequent to that the plaintiff is seeking grant of perpetual injunction. Therefore, the first defendant cannot at this stage submit that the plaintiff is not entitled for the relief of perpetual injunction. The Trial Court after framing appropriate issues will consider the evidence placed before it by both parties and decide all the issues, including the issue of perpetual injunction. Therefore, in application filed under Order VII Rule 11 the first defendant cannot contend that the plaintiff is not entitle for the relief of perpetual injunction in respect of route permit.

32. It is further submitted by the learned Senior counsel appearing for the first defendant that O.S.No.44 of 2006, was not decreed exparte on 01.12.2011, however, second and third respondents were on record, but they failed to contest, thereby, the contention of the plaintiff that in O.S.No.44 of 2006 is in exparte decree is not correct.

33. It is true that though the plaintiff has mentioned that O.S.No.44 of 2006 was an exparte decree as submitted by the learned counsel for the first defendant, the decree and judgment in O.S.No.44 of 2006, is not an exparte decree since the defendants 2 and 3 have made



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appearance and did not defend, thereby, for all practical purposes it can be said that the decree in O.S.No. 44 of 2006 is not an *exparte* decree.

However, the very fact that defendants 2 and 3 have decided not to defend O.S.No.44 of 2006, having appeared in the said suit, clearly gives signals that defendants 2 and 3 have deliberately suffered a decree. Had it been an *exparte* decree, the defendants 2 and 3 can still plead that there is no collusion between them and first defendant.

34. Learned counsel appearing for the first defendant has also submitted that the plaintiff who is not party in O.S.No.44 of 2006 has no *locus standi* to question the legality of judgment and decree passed in O.S.No.44 of 2006. This Court in its order dated 24.07.2019 in C.R.P.(PD).No.746 of 2019 and 777 of 2019, did not give any legal right to the plaintiff to institute O.S.No.37 of 2019 and this Court has only suggested or observed that the remedy for plaintiff is by way of another suit.

35. The contention of the first defendant is that the plaintiff has no *locus standi* to question the legality of decree passed in O.S.No.44 of 2006 cannot be appreciated for the simple reason that the plaintiff is the



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affected and sufferer in the hands of the first defendant on account of decree passed in O.S.No.44 of 2006. Therefore, certainly the plaintiff has got right to question the legality of passing the decree and judgement in O.S.No.44 of 2006.

36. It is submitted by the learned Senior Counsel for the defendant that the claim made by the plaintiff in O.S.No.37 of 2019 is hopelessly barred by limitation. According to him, the plaintiffs should have filed suit seeking to set aside the decree and sale deed within three years from the date when the right to sue first accrued, as per Article 59 of the Limitation Act. It is further submitted that contention of the plaintiff that he has no personal knowledge of filing O.S.No.44 of 2006, is incorrect as the plaintiff himself has filed I.A., on the file of the District Court, for setting aside sale deed, to recall the exparte decree and same was rejected by the Court by order dated 23.05.2012 and thereby as per Articles 58 and 59 of the limitation Act, and the prescribed period of limitation has expired long ago.



37. Learned counsel for the first defendant has cited an authority

decided in **C.S.RAMASWAMY Vs V.K.SENTHIL & ORS (2022**

LIVELAW (SC) 822, wherein at paragraph 7.9, it has been held thus:-

“7.9 Applying the law laid down by this Court in the aforesaid decisions on exercise of powers under Order VII Rule 11 CPC to the facts of the case on hand and the averments in the plaints, we are of the opinion that both the Courts below have materially erred in not rejecting the plaints in exercise of powers under Order VII Rule 11(d) CPC. The respective suits have been filed after a period of 10 years from the date of execution of the registered sale deeds. It is to be noted that one suit was filed by the minor, which was filed in the year 2006, in which some of the plaintiffs herein were also party to the said suit and in the said suit, there was a specific reference to the Sale Deed dated 19.09.2005 and the said suit came to be dismissed in the year 2014 and immediately thereafter the present suits have been filed. Thus, from the averments in the plaint and the bundle of facts stated in the plaint, we are of the opinion that by clever drafting, the plaintiffs have tried to bring the suits within the period of limitation, which



otherwise are barred by limitation. Therefore, considering the decisions of this Court in the case of T. Arivandandam (supra) and other decision of Raghwendra Sharan Singh (supra), and as the respective suits are barred by the law of limitation, the respective complaints are required to be rejected in exercise of powers under Order VII Rule 11”

38. He has further cited an another authority decided inn **(2020) 7 SUPREME COURT CASES – 366 (DAHIBEN Vs. ARVINDBHAI KALYANI BHANUSALI (GAJRA) DEAD THROUGH LEGAL REPRESENTATIVES AND OTHERS)**, it has been held thus:-

“23.8. Having regard to [Order VII Rule 14 CPC](#), the documents filed alongwith the complaint, are required to be taken into consideration for deciding the application under Order VII Rule 11 (a). When a document referred to in the complaint, forms the basis of the complaint, it should be treated as a part of the complaint.

[26. Articles 58 and 59](#) of the Schedule to the 1963 Act, prescribe the period of limitation for filing a suit where a declaration is sought, or cancellation of an instrument, or rescission of a contract, which reads as under :



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Description of suit	Period of limitation	Time from which period beings to run
58. To obtain any other declaration	Three years	When the right to sue first accrues
59. To cancel or set aside an instrument or decree or for the rescission of a contract	Three years	When the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded first become known to him.

The period of limitation prescribed under [Articles 58](#) and [59](#) of the 1963 Act is three years, which commences from the date when the right to sue first accrues.

27. In [Khatri Hotels Pvt. Ltd. & Anr. v. Union of India & Anr.](#),¹² this Court held that the use of the word 'first' between the words 'sue' and 'accrued', would mean that if a suit is based on multiple causes of action, the period of limitation will begin to run from the date when the right to sue first accrues. That is, if there are successive violations of the right, it would not give rise to a fresh cause of action, and the suit will be liable to be dismissed, if it is beyond the period of limitation counted from the date when the right to sue first accrued."



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39. He has cited the authority decided in RAGHWENDRA SHARAN SINGH Vs. RAM PRASANNA SINGH (DEAD) BY LEGAL REPRESENTATIVES (2020) 16 SUPREME COURT CASES – 601, wherein at paragraph No.7, it has been held thus:

“7. Applying the law **laid down by** this Court in the aforesaid decisions on exercise of powers under **Order 7 Rule 11 of the CPC** to the facts of the case in hand and the averments in the plaint, we are of the opinion that both the Courts below have materially erred in not rejecting the plaint in exercise of powers under **Order 7 Rule 11 of the CPC**. It is required to be noted that it is not in dispute that the gift deed was executed by the original plaintiff himself along with his brother. The deed of gift was a registered gift deed. The execution of the gift deed is not disputed by the plaintiff. It is the case of the plaintiff that the gift deed was a showy deed of gift and therefore the same is not binding on him. However, it is required to be noted that for approximately 22 years, neither the plaintiff nor his brother (who died on 15.12.2002) claimed at any point of time that the gift deed was showy deed of gift.



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One of the executants of the gift deed – brother of the plaintiff during his lifetime never claimed that the gift deed was a showy deed of gift. It was the appellant herein original defendant who filed the suit in the year 2001 for partition and the said suit was filed against his brothers to which the plaintiff was joined as defendant No. 10. It appears that the summon of the suit filed by the defendant being T.S. (Partition) Suit No. 203 of 2001 was served upon the defendant No.10 plaintiff herein in the year 2001 itself. Despite the same, he instituted the present suit in the year 2003. Even from the averments in the plaint, it appears that during these 22 years i.e. the period from 1981 till 2001/2003, the suit property was mortgaged by the appellant herein original defendant and the mortgage deed was executed by the defendant. Therefore, considering the averments in the plaint and the bundle of facts stated in the plaint, we are of the opinion that by clever drafting the plaintiff has tried to bring the suit within the period of limitation which, otherwise, is barred by law of limitation. Therefore, considering the decisions of this Court in the case of [T. Arivandandam](#) (supra) and others, as stated above, and as the suit is clearly barred by law of limitation, the plaint is required



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to be rejected in exercise of powers under [Order 7 Rule 11 of the CPC.](#)”

40. The learned counsel appearing for the first defendant has cited paragraphs Nos.18 and 21 of the judgment reported in **2015-4-L.W – 585 Dr.L.RAMACHANDRAN AND ANOTHER Vs. K.RAMESH & OTHERS**, in respect of Article 59 of the limitation Act is attracted in a suit filed for setting aside sale deed on ground of fraud or mistake.

41. On the other hand, learned Senior Counsel for the plaintiff submitted that while disposing of C.R.P.No.749 of 2019 and 777 of 2019 this Court has permitted the plaintiff to file a fresh suit in order to resolve the issue and submitted further that since the decree was obtained by fraud the plaintiff will get a cause of action to question the legality of the decree in O.S.No.44 of 2006 every time the decree obtained by fraud is pressed into service for passing of consequential orders.

42. Learned counsel for the plaintiff's has submitted that if a decree is passed without jurisdiction, aggrieved person can question the same whenever decree is sought to be enforced, he has cited a judgment



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of the Hon'ble Supreme Court in (1990) 1 SUPREME COURT CASES

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43. If the limitation is calculated from the date of execution of sale deed as per the decree in O.S.No.44 of 2006, there is no limitation for the plaintiff to file the suit. Similarly, if the date of knowledge of passing of decree in O.S.NO.44 of 2006 is taken as 23.05.2012 when Interlocutory Application filed by the plaintiff for setting aside exparte decree was rejected, the plaintiff has no limitation to seek the relief in O.S.NO.37 of 2019. However, as rightly submitted by the learned counsel for the plaintiff in CRP.No.746 of 20119 and 777 of 2019, this Court has observed that the plaintiff can file a fresh suit, in respect of issues being agitated by him. Therefore, from the date of passing of orders of CRP's on 24.07.2019, the plaintiff will get cause of action to file the suit. Further, the limitation is a question of law and facts, therefore, it is for the Trial Court to conclude after full fledged trial whether the suit claim in O.S.No.37 of 2019 is barred by limitation. Therefore at this stage on ground of limitation the plaint in O.S.No.37 of 2019 cannot be rejected.



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44. In view of the discussion made above, trial Court has rightly concluded that the petition filed by the first defendant under Order 7 Rule 11 of the Code of Civil Procedure has no merits. Accordingly, this Court cannot interfere with the order dated 31/3/2022 passed by the Principal District Judge, Nagapattinam, in I.A.No.2 of 2020 in O.S.No.37 of 2019.

45. In the result, this **Civil Revision Petition is dismissed**. No costs. Consequently, C.M.P.No.16199 of 2022 is closed.

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mvs.

Index: Yes/No

Neutral Citation: Yes/No

To

The Additional District Judge, Namakkal.



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Pre-delivery judgment made in
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